IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.290 OF 1993

1. Mr.Jai Nadershah Karani,)
)
2. Mrs.Najoo JalKarani,)
The owners of Flat No.11-A,)
situated on the 11th floor)
in "Diamond Court", 40,)
Laxmibai Jagmohandas Marg,)
(Nepean Sea Road),)
Bombay - 400 036.).. Petitioners.

V/s.

1. Mr.C.M. Betgeri,)
The Commissioner of Income-tax,)
)
2. Mr.S.C. Tiwari,)
The Commissioner of Income-tax,)
)
3. Mr.S.K. Laul,)
The Chief Engineer,)
All being the members of the)
Appropriate Authority having)
their office at Mittal Court,)
'A' Wing, 3rd Floor, Nariman)
Point, Bombay - 400 021.)
)
4. The Union of India,)
Aayakar Bhavan, New Marine)
Lines, Bombay - 400 020.)
)
5. Ms.Poonam Gobind Daryanani,)
residing at 421, Commerce)
House, 4th Floor, Nagindas)
Master Road, Fort,)
Bombay - 400 023.).. Respondents.

Mr.J.D. Mistri i/by M/s.Little & Co. for the petitioner for the petitioners.

Mr.R. Asokan for respondent Nos.1 to 4.

Mr.Murlidharan i/by M/s.Dadhich & Co. for respondent No.5.

CORAM : H.L. GOKHALE &
J.P. DEVADHAR, JJ.

DATED : 27TH NOVEMBER, 2006.

ORAL JUDGMENT (Per H.L. Gokhale, J.)

1. Heard Mr.J.D. Mistri for the petitioners, Mr.Asokan appears for respondent Nos.1 to 4 and Mr.Murlidharan appears for respondent NO.5.

2. This writ petition filed under Article 226 of the Constitution of India seeks to challenge the order dated 28th January, 1993 directing compulsory purchase of the property owned by the petitioners by passing necessary order under Chapter XX-C of the Income Tax Act, 1961.

3. The short facts leading to this petition are as follows :

The petitioners were the owners of Flat No.11-A of carpet area of 875 square feet situated on the 11th floor of a building known as "Diamond Court" situated at 40, Laxmibai Jagmohandas Marg, (formerly known as "Nepean Sea Road"). The petitioners entered into an agreement of sale with the respondent No.5 herein on 3rd November, 1992. As per the terms of that agreement, the petitioners were to receive Rs.5,00,000/- as earnest money and the remaining amount of Rs.70,00,000/- within 30 days after the NOC

was issued by the appropriate authority. The respondent Nos.1 to 3 were the members of the appropriate authority at the relevant time and the respondent No.4 to the petition is Union of India.

4. The petitioners filed requisite form No.37-I after signing of the agreement and on 8th January, 1993 they received a notice from the appropriate authority to show cause as to why the property should not be acquired compulsorily. The petitioners were called for hearing. Apart from the notice of hearing, no other documents were made available to the petitioners. At the time of hearing, the petitioners themselves relied upon a few comparable instances and pointed out that there was no under valuation of the flat concerned. As against this submission of the petitioners, the respondents relied upon five sale instances. The petitioners were not informed about the reliance of these instances at any time before the date of hearing. It was only at the time of hearing that the respondent Nos.1 to 3 relied upon some five sale instances. They were concerned with one flat in building known as Jal Darshan, second in a building known as Laxmi Nivas, third in a building known as Jehangir Tower, fourth in a building known as Kshitij and fifth in a building known as Petit Hall, all situated in the nearby area.

5. These five sale instances were during the period from 30th September, 1992 to 20th November, 1992 and the rate was supposed to be Rs.8,891/- to Rs.12,677/-. It was, therefore, submitted that when compared with these instances, the petitioners had resorted to under valuation of more than 15%. Based on these instances, the respondent Nos.1 to 3 passed an order directing compulsory purchase of these flats under Section 269UD(1) of the Income Tax Act, 1961 by the impugned order passed on 28th January, 1993.

6. The present petition is filed to challenge this order. The petition was admitted on 22nd January, 1993 and an interim stay has been granted on the condition that the petitioners will not sale or transfer the flat to anybody in the meanwhile.

7. Mr.Mistri, learned counsel for the petitioners principally submitted that there has been a gross violation of the principles of natural justice in the manner in which the appropriate authority proceeded to pass the order. He relied upon the judgment of the Apex Court in the case of C.B. Gautam V/s. Union of India reported in (1993) 199 ITR 530 (SC) where the Apex Court has laid down that in all such cases, the party whose property has been acquired ought to get an

adequate opportunity to defend. This opportunity to defend implies knowledge about the comparable instances with whom the property under question is to be compared to arrive at as to whether there is any under valuation or not. This judgment has been followed in different decisions of this Court in Jagdish Electronics (India) Pvt. Ltd. & Another V/s. Appropriate Authority, Income-tax & Others reported in 242 ITR 326 and Madankumar Babulal Sanghvi & Others V/s. Union of India & Others (Writ Petition No.833 of 1994) decided on 3rd October, 2006 by this bench.

8. In fact, it is necessary that the show cause notice itself must refer to and mention the comparable instances which are to be relied upon so that the party concerned gets an appropriate opportunity. In the instant case, it is at the time of hearing only that the instances were relied upon by the respondents. Even on merits, there is no discussion whatsoever about the merits and demerits of the five flats which have been relied upon. For the appropriate comparison one must have the data such as the date of construction of the building, on which floor the flat is situated, whether the flat is furnished, whether any parking space is available and what kind of view is available from the flat concerned and what are the surroundings. It is only when all

these factors are considered, thatone could arrive at somewhat approximate value of a property. In the absence of furnishing any such information, it is totally unfair to just refer to some cases at the time of hearing and then to say that there is under valuation without referring to the particular characteristics of the property concerned. The order arrived at by such a method apart from it being in violation of principles of natural justice, is unjustified on merits also. In the circumstances, the impugned order suffers from serious infirmity.

9. Mr.Asokan, learned counsel for the Union of India tried to defend the order and alternatively submitted that if the order is found to be defective, the appropriate authority may be directed to hear the parties once again. In our view no purpose would be served by doing this exercise. Now more than 13 years have passed after the original order was passed in the year 1993. It is material to note that the order passed by the appropriate authority refers to the judgment of the Apex Court in C.B. Gautam's case in the last para of the judgment. Thus, the members of the competent authority were aware of the decision of the Apex Court and yet they proceeded to pass an order in gross violation thereof. In this view of the matter, it will not be fair to continue these

proceedings further and to make the petitioners face the appropriate authority once again.

10. For the reasons stated above, we allow this petition. The impugned order of compulsory purchase is hereby quashed and set aside. The appropriate authority is directed to issue NOC in favour of the petitioners.

11. Rule is made absolute in terms of prayer (a) and (b) with no order as to costs.

(H.L. GOKHALE, J.)

(J.P. DEVADHAR, J.)